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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

To: The Commission *DOCKET FILE COPY ORIGINAL*

CONSOLIDATED REPLY TO OPPOSITIONS

I. INTRODUCTION

IT&E Overseas, Inc. ("IT&E"), by its attorneys and pursuant to Section 1.429(g) of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.429(g) (1995), hereby submits this reply to the oppositions, filed on October 21, 1996, by the Guam Telephone Authority ("GTA") and the Governor of Guam, the Governor of the Commonwealth of the Northern Mariana Islands (the "CNMI"), and the State of Hawaii ("Hawaii") (collectively, the "Opposing Parties"), objecting to IT&E's Petition for Partial Reconsideration ("Petition"), filed on September 16, 1996, in the above-captioned proceeding.¹ In its Petition, IT&E requests the Commission to actively monitor and

¹ Since IT&E's Petition was placed on public notice in the Federal Register on October 4, 1996, the deadline for filing oppositions to IT&E's Petition was October 21, 1996. See 47 C.F.R. §§ 1.4(b), 1.429(f) (1995). Accordingly, the deadline for filing a reply to oppositions to IT&E's petition is November 5, 1996. See 47 C.F.R. §§ 1.4(b), 1.4(h), 1.429(g). Thus, this Consolidated Reply is timely filed.

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supervise the implementation of rate integration on Guam and the CNMI to ensure that competition is preserved and fostered. Petition of IT&E, at 2 (filed Sept. 16, 1996). IT&E also urges the Commission to reconsider its dismissal of IT&E's request for forbearance from enforcement of the rule requiring rate integration as applied to IT&E's provision of services to Guam and the CNMI. Id. As discussed herein, despite their objections, the Opposing Parties fail to offer any well-reasoned basis to deny IT&E's limited forbearance request, and the Commission accordingly should exercise its forbearance authority, under Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 10 (the "Act"), to permit IT&E to maintain its cost-based rate structure.

II. THE OPPOSITIONS TO IT&E'S PETITION

In their oppositions to IT&E's Petition, the Opposing Parties urge the Commission to deny IT&E's request for limited forbearance. See Joint Opposition of Governor of Guam and GTA, at 7 (filed Oct. 21, 1996); Opposition of the Governor of the CNMI, at 17-20 (filed Oct. 21, 1996); Consolidated Opposition and Reply Comments of Hawaii, at 10-12 (filed Oct. 21, 1996). None of these parties, however, object to IT&E's request for the Commission's continued monitoring and supervision of the implementation of rate integration on Guam and the CNMI.

The Governor of Guam and GTA oppose IT&E's limited forbearance request because they fear that the grant of such a forbearance request would compromise the "overall goal" of integrating Guam into the domestic rate pattern. Joint Opposition of Governor of Guam and GTA, at 7. They argue that although "Guam ratepayers may be required to pay slightly

higher averaged rates once the CNMI is integrated[,] [t]his is part of the concept of 'nationhood' and we must accept our fair share of the burden." Id. Similarly, the Governor of the CNMI echoes the concern that the grant of IT&E's limited forbearance request would be "inconsistent" with the Commission's goal of extending rate integration to Guam and the CNMI. Opposition of the Governor of the CNMI, at 17-18. Finally, Hawaii alleges that extending forbearance to IT&E would result in "unjustly or unreasonably discriminatory rates" and that therefore the Commission may not exercise its forbearance authority in such a case. Consolidated Opposition and Reply Comments of Hawaii, at 11. Hawaii also argues that the Commission cannot extend forbearance to IT&E without "invit[ing] numerous small carriers to seek relief from the rate integration requirement." Id. at 12.

III. COMMISSION GRANT OF IT&E'S LIMITED FORBEARANCE REQUEST IS CONSISTENT WITH THE REQUIREMENTS OF SECTION 10 OF THE ACT

In objecting to IT&E's limited forbearance request, the Opposing Parties insist on a rigid application of rate integration without any apparent regard to the fundamental purposes of rate integration or to the unique conditions of the telecommunications markets of Guam and the CNMI. Their central concern appears to be that extending forbearance to IT&E would compromise the objectives of rate integration by setting a precedent for other carriers to obtain similar relief. IT&E firmly believes, however, that the justification for exempting IT&E from the general rate integration obligation cannot be easily extended to other carriers. Indeed, IT&E's forbearance request is limited to the following unique circumstances: (1) IT&E does not serve a combination of low- and high-cost areas, but rather originates traffic

only from Guam and the CNMI, both of which are undisputedly high cost areas;² (2) IT&E is a regional carrier that lacks the ability to draw on a large national pool of interstate revenues to cover the high costs of service to Guam and the CNMI; and (3) the Commission has never previously extended rate integration to Guam and the CNMI and thus has no experience in developing a comprehensive rate integration plan narrowly tailored to the unique telecommunications markets of Guam and the CNMI. Surely, the Commission's exercise of its forbearance authority in these limited circumstances will not undermine the laudable objectives of rate integration.

Unlike IT&E, other regional and national carriers serve a geographic mix of low- and high-cost areas and thus are able to spread their costs of service more equitably among their pool of subscribers. The impact of rate integration on the subscribers of these other carriers is much less severe, since the subscribers who would experience a rate increase would be those residing in low-cost areas and who would thus be better able to absorb such rate increase. In contrast, because IT&E originates traffic only from two high-cost areas, denial of limited forbearance could impose an unacceptable burden on IT&E's subscribers on Guam, who would be required to bear the high costs of telecommunications service to both Guam and the CNMI. As IT&E previously asserted in its Petition, rate integration was

² The Governor of the CNMI has stated expressly that "telecommunications service costs are extraordinarily high in the Commonwealth." Comments of the CNMI, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 9 (filed Apr. 12, 1996). The Governor of Guam also has acknowledged the "inequities in the cost of providing service [to Guam] due to [Guam's] remoteness or distance" and has advocated that such higher costs should be "offset by competitively neutral universal service support mechanisms adopted by the Commission." Comments of the Governor of Guam, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 3 (filed Apr. 12, 1996).

never intended to cause the spreading of the high costs of service to a discrete, insular area, such as the CNMI, among a limited pool of subscribers residing in another high-cost, insular area, such as Guam. Because the Commission has never previously extended rate integration to Guam and the CNMI, it should give special consideration to the unique telecommunications markets of Guam and the CNMI.

Since other regional and national carriers still would be subject to the Commission's rate integration rule, permitting IT&E the necessary flexibility to charge rates that reflect the cost differential between serving Guam and the CNMI would not deny consumers the benefits of rate integration. Indeed, the grant of IT&E's Petition seeking limited forbearance will not immunize IT&E from the effects of rate integration. IT&E still would be required to compete with the integrated rates of other carriers. If IT&E cannot trim its costs by maximizing its efficiencies, its rates will not be competitive and it will risk losing subscribers to its competitors with lower rates. Thus, consumers would not be adversely affected by the grant of IT&E's forbearance request. At the same time, IT&E would be able to retain the pricing flexibility which it requires in order to respond effectively and efficiently to the needs of its subscribers on Guam and the CNMI.

Furthermore, despite Hawaii's simplistic contention that the grant of IT&E's limited forbearance request would result in unjustly or unreasonably discriminatory rates, the Commission has never held that the charging of higher rates that reflect the higher costs of service to a subcategory of subscribers constitutes unjust or unreasonable discrimination. IT&E has established, without dispute from any party to this proceeding, that the costs of providing telecommunications service to the CNMI are significantly higher than the costs of

providing telecommunications service to Guam. See IT&E Petition, at 6. IT&E also has established without dispute that the higher costs of service to the CNMI are the result of the monopoly rates of Comsat for INTELSAT space segment and the non-cost-based access charges of the Micronesian Telecommunications Corporation, the exclusive provider of local exchange services as well as a primary provider of interexchange services to the CNMI. Id. To recoup the higher costs of service to the CNMI, IT&E thus is required to charge higher rates to its subscribers in the CNMI. Although IT&E may be able to recoup the higher costs of serving the CNMI by distributing part of the cost burden to its subscribers on Guam, IT&E believes that it is inequitable to require its subscribers on Guam to bear not only their own high costs of service, but also the high costs of service to the residents of the CNMI. Thus, rather than resulting in unjust or unreasonable discriminatory rates, the grant of IT&E's limited forbearance request will permit IT&E the flexibility to establish equitable rates based on costs and will protect IT&E's subscribers on Guam from bearing more than their fair share of service costs.


IV. CONCLUSION

For the reasons stated above and in its Petition, IT&E reiterates its request for the Commission to extend limited forbearance from enforcement of the rate integration rule as applied to IT&E's provision of services to Guam and the CNMI. IT&E has demonstrated amply that (1) enforcement of the Commission's rate integration rule as applied to IT&E is not necessary to ensure just and reasonable rates, (2) such enforcement is not necessary for the protection of consumers, and (3) forbearance from such enforcement is consistent with

the public interest. Accordingly, the grant of IT&E's limited forbearance request is entirely appropriate under Section 10 of the Act, 47 U.S.C. § 10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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